

Adopted	Rejected
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## COMMITTEE REPORT

YES:	12
NO:	0

### MR. SPEAKER:

*Your Committee on Courts and Criminal Code, to which was referred House Bill 1264, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill **be amended** as follows:*

- 1 Page 4, between lines 15 and 16, begin a new paragraph and insert:
- 2 "SECTION 5. IC 9-30-6-8 IS AMENDED TO READ AS FOLLOWS
- 3 [EFFECTIVE JULY 1, 2004]: Sec. 8. (a) Whenever a judicial officer
- 4 has determined that there was probable cause to believe that a person
- 5 has violated IC 9-30-5 or IC 14-15-8, the clerk of the court shall
- 6 forward:
- 7 (1) a copy of the affidavit; and
- 8 (2) a bureau certificate as described in section 16 of this chapter;
- 9 to the bureau.
- 10 (b) The probable cause affidavit required under section 7(b)(2) of
- 11 this chapter must do the following:
- 12 (1) Set forth the grounds for the arresting officer's belief that
- 13 there was probable cause that the arrested person was operating
- 14 a vehicle in violation of IC 9-30-5 or a motorboat in violation of

1 IC 14-15-8.

2 (2) State that the person was arrested for a violation of IC 9-30-5  
3 or operating a motorboat in violation of IC 14-15-8.

4 (3) State whether the person:

5 (A) refused to submit to a chemical test when offered; or

6 (B) submitted to a chemical test that resulted in prima facie  
7 evidence that the person was intoxicated.

8 (4) Be sworn to by the arresting officer.

9 (c) **Except as provided in subsection (d)**, if it is determined under  
10 subsection (a) that there was probable cause to believe that a person has  
11 violated IC 9-30-5 or IC 14-15-8, at the initial hearing of the matter held  
12 under IC 35-33-7-1:

13 (1) the court shall recommend immediate suspension of the  
14 person's driving privileges to take effect on the date the order is  
15 entered;

16 (2) the court shall order the person to surrender all driver's  
17 licenses, permits, and receipts; and

18 (3) the clerk shall forward the following to the bureau:

19 (A) The person's license or permit surrendered under this  
20 section or section 3 or 7 of this chapter.

21 (B) A copy of the order recommending immediate suspension  
22 of driving privileges.

23 (d) **If it is determined under subsection (a) that there is**  
24 **probable cause to believe that a person violated IC 9-30-5, the**  
25 **court may issue an order recommending that the person be**  
26 **prohibited from operating a motor vehicle unless the motor**  
27 **vehicle is equipped with a functioning certified ignition interlock**  
28 **device under IC 9-30-8 until the bureau is notified by a court that**  
29 **the criminal charges against the person have been resolved.**

30 SECTION 6. IC 9-30-6-8.5 IS ADDED TO THE INDIANA CODE  
31 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
32 1, 2004]: **Sec. 8.5. (a) If the bureau receives an order**  
33 **recommending use of an ignition interlock device under section**  
34 **8(d) of this chapter, the bureau shall immediately do the**  
35 **following:**

36 (1) **Mail a notice to the person's last known address stating**

1           **that the person may not operate a motor vehicle unless the**  
 2           **motor vehicle is equipped with a functioning certified ignition**  
 3           **interlock device under IC 9-30-8 commencing:**

4               **(A) five (5) days after the date of the notice; or**

5               **(B) on the date the court enters an order recommending**  
 6               **use of an ignition interlock device;**

7           **whichever occurs first.**

8           **(2) Notify the person of the right to a judicial review under**  
 9           **section 10 of this chapter.**

10          **(b) Notwithstanding IC 4-21.5, an action that the bureau is**  
 11          **required to take under this section is not subject to any**  
 12          **administrative adjudication under IC 4-21.5.**

13          SECTION 7. IC 9-30-6-9 IS AMENDED TO READ AS FOLLOWS  
 14          [EFFECTIVE JULY 1, 2004]: Sec. 9. (a) **This section does not apply**  
 15          **if an ignition interlock device order is issued under section 8(d) of**  
 16          **this chapter.**

17          **(b) If the affidavit under section 8(b) of this chapter states that a**  
 18          **person refused to submit to a chemical test, the bureau shall suspend**  
 19          **the driving privileges of the person:**

20               (1) for one (1) year; or

21               (2) until the suspension is ordered terminated under IC 9-30-5.

22          ~~(b)~~ **(c) If the affidavit under section 8(b) of this chapter states that**  
 23          **a chemical test resulted in prima facie evidence that a person was**  
 24          **intoxicated, the bureau shall suspend the driving privileges of the**  
 25          **person:**

26               (1) for one hundred eighty (180) days; or

27               (2) until the bureau is notified by a court that the charges have  
 28               been disposed of;

29          **whichever occurs first.**

30          ~~(c)~~ **(d) Whenever the bureau is required to suspend a person's**  
 31          **driving privileges under this section, the bureau shall immediately do the**  
 32          **following:**

33               (1) Mail a notice to the person's last known address that must  
 34               state that the person's driving privileges will be suspended for a  
 35               specified period, commencing:

36               (A) five (5) days after the date of the notice; or

1 (B) on the date the court enters an order recommending  
 2 suspension of the person's driving privileges under section 8(c)  
 3 of this chapter;

4 whichever occurs first.

5 (2) Notify the person of the right to a judicial review under section  
 6 10 of this chapter.

7 ~~(d)~~ (e) Notwithstanding IC 4-21.5, an action that the bureau is  
 8 required to take under this article is not subject to any administrative  
 9 adjudication under IC 4-21.5.

10 ~~(e)~~ (f) If a person is granted probationary driving privileges under  
 11 IC 9-30-5 and the bureau has not received the probable cause affidavit  
 12 described in section 8(b) of this chapter, the bureau shall suspend the  
 13 person's driving privileges for a period of thirty (30) days. After the  
 14 thirty (30) day period has elapsed, the bureau shall, upon receiving a  
 15 reinstatement fee from the person who was granted probationary  
 16 driving privileges, issue the probationary license if the person otherwise  
 17 qualifies for a license.

18 ~~(f)~~ (g) If the bureau receives an order granting probationary driving  
 19 privileges to a person who has a prior conviction for operating while  
 20 intoxicated, the bureau shall do the following:

21 (1) Issue the person a probationary license and notify the  
 22 prosecuting attorney of the county from which the order was  
 23 received that the person is not eligible for a probationary license.

24 (2) Send a certified copy of the person's driving record to the  
 25 prosecuting attorney.

26 The prosecuting attorney shall, in accordance with IC 35-38-1-15,  
 27 petition the court to correct the court's order. If the bureau does not  
 28 receive a corrected order within sixty (60) days, the bureau shall notify  
 29 the attorney general, who shall, in accordance with IC 35-38-1-15,  
 30 petition the court to correct the court's order.

31 SECTION 8. IC 9-30-6-10 IS AMENDED TO READ AS  
 32 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 10. (a) A person  
 33 **against whom an ignition interlock device order has been issued**  
 34 **under section 8.5 of this chapter or** whose driving privileges have  
 35 been suspended under section 9 of this chapter is entitled to a prompt  
 36 judicial hearing. The person may file a petition that requests a hearing:

37 (1) in the court where the charges with respect to the person's

operation of a vehicle are pending; or

(2) if charges with respect to the person's operation of a vehicle have not been filed, in any court of the county where the alleged offense or refusal occurred that has jurisdiction over crimes committed in violation of IC 9-30-5.

(b) The petition for review must:

(1) be in writing;

(2) be verified by the person seeking review; and

(3) allege specific facts that contradict the facts alleged in the probable cause affidavit.

(c) The hearing under this section shall be limited to the following issues:

(1) Whether the arresting law enforcement officer had probable cause to believe that the person was operating a vehicle in violation of IC 9-30-5.

(2) Whether the person refused to submit to a chemical test offered by a law enforcement officer.

(d) If the court finds:

(1) that there was no probable cause; or

(2) that the person's driving privileges were suspended under section 9(a) of this chapter and that the person did not refuse to submit to a chemical test;

the court shall order the bureau to **rescind the ignition interlock device requirement or** reinstate the person's driving privileges.

(e) The prosecuting attorney of the county in which a petition has been filed under this chapter shall represent the state on relation of the bureau with respect to the petition.

(f) The petitioner has the burden of proof by a preponderance of the evidence.

(g) The court's order is a final judgment appealable in the manner of civil actions by either party. The attorney general shall represent the state on relation of the bureau with respect to the appeal.

SECTION 9. IC 9-30-6-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 11. (a) Notwithstanding any other provision of this chapter, IC 9-30-5, or IC 9-30-9, the court shall order the bureau to **rescind an ignition interlock device requirement or** reinstate the driving privileges of a person if:

(1) all of the charges under IC 9-30-5 have been dismissed and the prosecuting attorney states on the record that no charges will be refiled against the person;

(2) the court finds the allegations in a petition filed by a defendant under section 18 of this chapter are true; or

(3) the person:

(A) did not refuse to submit to a chemical test offered as a result of a law enforcement officer having probable cause to believe the person committed the offense charged; and

(B) has been found not guilty of all charges by a court or by a jury.

(b) The court's order must contain findings of fact establishing that the requirements for reinstatement described in subsection (a) have been met.

(c) A person whose driving privileges are reinstated under this section is not required to pay a reinstatement fee.

SECTION 10. IC 9-30-6-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 13. If a court orders the bureau to **rescind an ignition interlock device requirement or** reinstate a person's driving privileges under this article, the bureau shall comply with the order. Unless the order for reinstatement is issued under section 11(2) of this chapter, the bureau shall also do the following:

(1) Remove any record of the **ignition interlock device requirement or** suspension from the bureau's recordkeeping system.

(2) Reinstate the privileges without cost to the person.

SECTION 11. IC 9-30-6-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 18. (a) A person **against whom an ignition interlock device order has been issued under section 8.5 of this chapter or** whose driving privileges have been suspended under section 9(b) of this chapter is entitled to **rescission of the ignition interlock device requirement or** reinstatement of driving privileges if the following occur:

(1) After a request for an early trial is made by the person at the initial hearing on the charges, a trial or other disposition of the charges for which the person was arrested under IC 9-30-5 is not

1 held within ninety (90) days after the date of the person's initial  
2 hearing on the charges.

3 (2) The delay in trial or disposition of the charges is not due to the  
4 person arrested under IC 9-30-5.

5 (b) A person who desires **rescission of the ignition interlock**  
6 **device requirement or** reinstatement of driving privileges under this  
7 section must file a verified petition in the court where the charges  
8 against the petitioner are pending. The petition must allege the following:

9 (1) The date of the petitioner's arrest under IC 9-30-5.

10 (2) The date of the petitioner's initial hearing on the charges filed  
11 against the petitioner under IC 9-30-5.

12 (3) The date set for trial or other disposition of the matter.

13 (4) A statement averring the following:

14 (A) That the petitioner requested an early trial of the matter at  
15 the petitioner's initial hearing on the charges filed against the  
16 petitioner under IC 9-30-5.

17 (B) The trial or disposition date set by the court is at least  
18 ninety (90) days after the date of the petitioner's initial hearing  
19 on the charges filed against the petitioner under IC 9-30-5.

20 (C) The delay in the trial or disposition is not due to the  
21 petitioner.

22 (c) Upon the filing of a petition under this section, the court shall  
23 immediately examine the record of the court to determine whether the  
24 allegations in the petition are true.

25 (d) If the court finds the allegations of a petition filed under this  
26 section are true, the court shall order **rescission of the ignition**  
27 **interlock device requirement or** reinstatement of the petitioner's  
28 driving privileges under section 11 of this chapter. The reinstatement  
29 must not take effect until ninety (90) days after the date of the  
30 petitioner's initial hearing."

31 Renumber all SECTIONS consecutively.

(Reference is to HB 1264 as introduced.)

**and when so amended that said bill do pass.**

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Representative Dvorak